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CORY SPENCER, DIANA MILENA
18 REED, and COASTAL PROTECTION
RANGERS, INC.
19

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
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23 CORY SPENCER, an individual;
24 DIANA MILENA REED, an
individual; and COASTAL
25 PROTECTION RANGERS, INC., a
26 California non-profit public benefit
corporation,

27
28 Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' STATEMENT OF
GENUINE DISPUTES OF MATERIAL
FACT IN OPPOSITION TO
DEFENDANT ALAN JOHNSTON'S
MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Case No. 2:16-cv-02129-SJO (RAOx)

PLTFS.' STMT. OF GENUINE DISPUTES OF MATERIAL FACT IN OPP. TO DEFT ALAN JOHNSTONS' MOT.
FOR SUMM. JUDGMENT OR, IN THE ALT., SUMM. ADJUD.

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v.

LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
LUNADA BAY BOYS, including but
not limited to SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON
AKA JALIAN JOHNSTON,
MICHAEL RAE PAPAYANS,
ANGELO FERRARA, FRANK
FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

Defendants.

Judge: Hon. S. James Otero
Date: September 5, 2017
Time: 10:00 a.m.
Crtrm.: 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

Plaintiffs Cory Spencer, Diana Milena Reed, and Coastal Protection Rangers, Inc. ("Plaintiffs") hereby respectfully submit the following Statement of Genuine Disputes of Material Fact in Opposition to Alan Johnston's ("Defendant") Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

As a preliminary matter, Plaintiffs object to Defendant Alan Johnston's Statement of Uncontroverted Facts & Conclusions of Law ("Separate Statement") on the grounds that it does not comply with Judge Otero's Standing Order. Specifically, Defendant Johnston's Separate Statement does not comply with the requirement that it be prepared in a two-column format. Nor does it separate the statements of undisputed facts in support of each claim for relief. As a result, it is unclear which allegedly undisputed facts support which claim for relief. On this basis alone Defendant Johnston's Motion for Summary Judgment should be denied.

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<p align="center">Defendants' Statement of Uncontroverted Facts and Evidence in Support</p>	<p align="center">Plaintiffs' Response in Opposition</p>
<p>1. Plaintiff Corey Spencer has not seen Defendant Alan Johnston. [Declaration of J. Patrick Carey (“Carey Decl.”), ¶ 3, Exhibit 1, Deposition of Plaintiff Cory Spencer (“Spencer Depo.”), 323:17-20.]</p>	<p>1. Disputed. The evidence does not support the UMF. Plaintiff Spencer did not testify that he did not see Defendant Alan Johnston. He testified that he did not know if he had seen him. Spencer Depo., 323:17-20. See also Plaintiffs’ Statement of Additional Material Facts In Opposition to Individual Defendants’ Motions for Summary Judgment.</p>
<p>2. On February 13, 2016, Defendant Johnston approached Plaintiff Reed at the patio structure at Lunada Bay. Carrying his surfboard preparing to go surfing, he stated, “Another day in [expletive] paradise.” [Declaration of J. Patrick Carey (“Carey Decl.”), ¶ 5, Exhibit 3, Screenshots from Video of February 13, 2016 incident (“Feb 13 Video”).]</p>	<p>2. Disputed in Part. Plaintiffs do not dispute that Defendant Johnston was present on the patio structure on February 13, 2016, that he approached Plaintiff Reed, or that he stated “another day in [expletive] paradise.” However, the evidence cited does not support the UMF. The screenshots cited in support of this UMF do not establish that who is depicted in these images, let alone what occurred or what was said. See also Plaintiffs’ Statement of Additional Material Facts In Opposition to Individual</p>

<p>1 Defendants' Statement of 2 Uncontroverted Facts and Evidence 3 in Support</p>	<p>Plaintiffs' Response in Opposition</p>
<p>4</p>	<p>Defendants' Motions for Summary Judgment.</p>
<p>5 3. Defendant Johnston reached into 6 his backpack and grabbed a can of beer. 7 He asked Plaintiff Reed and her friend if 8 they were drinking and if they wanted a 9 beer. 10 11 [Declaration of J. Patrick Carey ("Carey 12 Decl."), ¶ 5, Exhibit 3, Screenshots 13 from Video of February 13, 2016 14 incident ("Feb 13 Video").] 15 16</p>	<p>3. Disputed in Part. The evidence cited does not support the UMF. Plaintiffs do not dispute that Defendant Johnston was drinking beer, however, the screenshots cited in support of this UMF do not establish who is depicted in these images, let alone what occurred or what was said. See also Plaintiffs' Statement of Additional Material Facts In Opposition to Individual Defendants' Motions for Summary Judgment.</p>
<p>17 4. Defendant Johnston then opened 18 his can of beer. A small amount of foam 19 from the beer sprayed onto Plaintiff 20 Reed's sweater sleeve and her camera 21 as Defendant Johnston opened the beer. 22 23 [Declaration of J. Patrick Carey ("Carey 24 Decl."), ¶ 5, Exhibit 3, Screenshots 25 from Video of February 13, 2016 26 incident ("Feb 13 Video").] 27 28</p>	<p>4. Disputed in Part. The evidence cited does not support the UMF. The screenshots cited in support of this UMF do not establish who is depicted in these images, let alone what occurred or what was said. Additionally, Defendant's counsel's characterization of the event is not evidence. See also Plaintiffs' Statement of Additional Material Facts In Opposition to Individual</p>

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Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
	Defendants' Motions for Summary Judgment.
5. Plaintiff Reed's camera was not damaged. [Declaration of J. Patrick Carey ("Carey Decl."), ¶ 4, Exhibit 2, Deposition of Plaintiff Diana Reed ("Reed Depo."), 176:5-6.]	5. Undisputed.
Defendant's Conclusions of Law	Plaintiffs' Response in Opposition
1. Plaintiffs Corey Spencer, Diana Reed, and Coastal Protection Rangers, Inc. (collectively "Plaintiffs") do not have evidence sufficient to prove that Defendant Johnson committed a battery upon Plaintiffs.	1. Disputed.
2. Plaintiffs do not have evidence sufficient to prove that Defendant Johnston committed an assault upon Plaintiffs.	2. Disputed.

1	3. Plaintiffs do not have evidence	3. Disputed.
2	sufficient to prove that Defendant	
3	Johnston was negligent toward	
4	Plaintiffs.	
5	4. Plaintiffs do not have evidence	4. Disputed.
6	sufficient to prove that Defendant	
7	Johnston committed acts of public	
8	nuisance against Plaintiffs.	
9	5. Plaintiffs do not have evidence	5. Disputed.
10	sufficient to prove that Defendant	
11	Johnston interfered with or attempted to	
12	interfere with Plaintiffs exercise or	
13	enjoyment of federal or state	
14	constitutional rights in violation of	
15	California’s Bane Act, <i>California Civil</i>	
16	<i>Code</i> § 52.1(b).	
17	6. Judgment should be entered favor	6. Disputed.
18	of Defendant Johnston forthwith.	

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1 DATED: August 7, 2017

HANSON BRIDGETT LLP

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By: /s/ Samantha Wolff
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